HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No. 52 OF 2006

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Between:

Manda Sadanandam and four others

……Appellants/Petitioners

And

The Secretary,

Regional Transport Authority,

Warangal, Warangal District.

……Respondent/Respondent

:: JUDGMENT ::

Counsel for the Petitioner : Sri P. Sridhar Rao

Counsel for the Respondent : Government Pleader for

Transport

Dated: 27-03-2006

Per G.S. SINGHVI, CJ

Whether in exercise of the power conferred upon it under Section 74(2) of the Motor Vehicles Act, 1988 (for short, 'the Act') and Rule 177 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short, 'the Rules'), Regional Transport Authority, Warangal (for short, 'RTA, Warangal') could prohibit plying of auto rickshwas within the limits of municipal areas of Warangal, Hanamkonda and Kazipet, is the question which arises for determination in this appeal filed against order dated 29-11-2004 passed by the learned Single Judge in Writ Petition No. 15276 of 2004 and other connected matters.

The appellants are owners of three-wheeler auto rickshaws, a large number of which were purchased by obtaining financial assistance from banks etc. They applied for grant of contract carriage permit under Section 74 of the Act. While granting permits, RTA, Warangal imposed the following condition:

> "To ply outside the limits of municipal areas of Warangal, Hanamkonda and Kazipet and within a radius of 60 km. from the residence of owners excluding prohibited routes."

The appellants challenged the aforementioned condition by filing writ petition under Article 226 of the Constitution of India, which was registered as Writ Petition No.15276 of 2004. They pleaded that the prohibition imposed by RTA, Warangal on

the plying of auto rickshaws within the limits of municipal area is ultra vires to the provisions of the Act and the Rules and is also violative of their fundamental rights guaranteed under Articles 14, 19 (1) (g) and 21 of the Constitution. They further pleaded that there were earning livelihood by plying auto rickshaws and there was no justification, legal or otherwise, to restrict the operation of auto rickshwas outside the limits of municipal area, more so because they were residents of the localities situated in Warangal, Hanamkonda and Kazipet.

In the counter filed by the respondent, it was pleaded that the decision to keep auto rickshaws beyond 60 kilometres of the municipal limits was taken in the wake of growing criticism of the public on account of accidents caused by three wheeler auto rickshaws. It was further pleaded that in exercise of the power vested in it under Section 74 of the Act read with Rules 174 and 177 of the Rules, the Regional Transport Authority could impose restriction on the plying of auto rickshaws in the specified areas.

The learned Single Judge referred to the provisions of Section 74 of the Act and Rule 177 of the Rules and upheld the restriction by recording the following observations:

> "Under this Rule, once again the Regional Transport Authority has been conferred with ample authority to add any restriction in respect of plying of contract carriages within the routes of 60 KMs from the place of business of registered owner without counter signature of the authorities as mentioned therein.
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> Except making sweeping submissions that the respondents ought not to have imposed any such conditions and also going to the extent of contending that such restriction runs contrary to the provisions of the Act and the Rules, no specific provision is brought to the notice in support of their contention. Whereas the provisions as mentioned above, specifically contemplate that similar such restrictions can validly be made by the authorities concerned.
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> Further, it can not be said that the impugned action is not innovative in its nature without any foundation therefor. According to the respondents, the decision had to be taken by the District Collector and the authorities concerned, by taking note of the heavy increase in the number of vehicles and occurrence of accidents. In their opinion, such restrictions would enable free flow of traffic and avoid accidents. It is also to be noted that with regard to the said decision or the

influencing reasons, there is no serious challenge by the petitioners. In view of the same, this court is of the opinion that the petitioners have failed to make out their case to show that such restriction goes in any way outside the scope of the provisions of the Act and the Rules. In the circumstances, it is to be held that imposition of such restriction in regard to plying of auto rickshaws, is valid and sustainable. I do not find any merits in these Writ Petitions".

We have heard the learned counsel for the appellants and the learned Government Pleader and have carefully perused the record including counter affidavit filed by Sri M. Basi Reddy, Regional Transport Officer, Khammam-cum-In-charge Secretary/Regional Transport Officer, Warangal, in pursuance of order dated 13-02-2006. In paragraphs 2 to 4 of his affidavit, Sri M.Basi Reddy has averred as under:

"2. It is submitted that the Warangal City comprised of Hanamkonda, Warangal and Kazipet. It is a big city in Telangana region, after Hyderabad consisting of several educational institutions like National Institute of Technology (NIT), Kakatiya University, Kakatiya Medical College in addition to other private colleges, schools and historical places. The vehicular population in the city is increasing day by day by registering about 30 to 40 vehicles per day and out of them 60 and 70 auto rickshaws per month. There were about 7,650 auto rickshaws in the town as on 31.10.2002.

3. In view of the heavy number of auto rickshaws plying in Warangal city, occurring the number of accidents, the District Collector and Chairman of the Regional Transport Authority, Warangal took a decision to register the vehicles with a condition that the vehicles registered from 01.11.2002 are prohibited from entering, plying in the municipal area of Warangal as per Section 74(g) (a) of the M.V. Act. Accordingly, the permits are being issued for the vehicles registered from 01.11.2002 onwards to ply outside the limits of municipal area of Warangal, Hanamkonda and Kazipet within the radius of 60 kilometers from the residence of owner excluding prohibited routes. The vehicles plying, entering under limits municipal area of Warangal, Hanamkonda and Kazipet as per Section 74(3) (a) of the M.V.Act and the restriction is imposed to avoid accidents and also to maintain free flow of traffic in the city.

4. It is submitted that as per Rule 177 of A.P.M.V.Rules, 1989, the Regional Transport Authority of any one region may grant a permit in respect of an auto rickshaw to ply as a contract carriage to be valid for an area lying within a radius of 60 Kms. from the principal place of registered owner without the counter signature of the Regional Transport Authority or Regional Transport Authorities of other region or regions.

The vehicular population as on 31.10.2002 before the restriction of auto rickshaws in the city are as follows:

Sl.No.	Category	No.of vehicles on roll (As on31.10.2002)	No.of vehicles plying in the town i.e., Hanamkonda, Warangal and Kazipet.
1.	A.P.S.R.T.C. Buses	720	102
2.	Private Stage carriages	09	--
3.	Contract carriages	44	--
4.	Goods Vehicles	4488	--
5.	Maxi Cabs	442	--
6.	Educational institutions buses	207	108
7.	Tractor Trailers	6620	3487
8.	Motor Cabs	1548	1174
9.	Auto Rickshaws	9200	7650
10.	Motor Cycles	87,284	64,516
11.	Cars and Jeeps	4398	4011
	Total	1,14,960	81,048

Vehicular Population as on 31.1.2006 is as follows:

Sl.No.	Category	No.of vehicles on roll (As on31.1.2006)	No.of vehicles plying in the town i.e., Hanamkonda, Warangal and Kazipet.
1.	A.P.S.R.T.C. Buses	770	95
2.	Private Stage carriages	05	--
3.	Contract carriages	51	--
4.	Goods Vehicles	7303	--
5.	Maxi Cabs	473	--
6.	Educational institutions buses	427	284
7.	Tractor Trailers	8322	3826
8.	Motor Cabs	1587	1122
9.	Auto Rickshaws	15283	7642
10.	Motor Cycles	126750	87600
11.	Cars and Jeeps	7542	4676
	Total	1,68,513	1,05,245

The analysis of the figures enumerated in the affidavit of Sri M.Basi Reddy shows that there were 7,650 auto rickshaws in the municipal area of Warangal, Hanamkonda and Kazipet before 31.10.2002 i.e., the date on which restriction was imposed on the plying of auto rickshaws. At the relevant time, there were 3,487 tractor trolleys, 1,174 motor cabs, 64,516 motor cycles and 4,011 four wheelers plying on the roads. As on 31.1.2006, the population of the vehicles on the road included 3,826 tractor trolleys, 1,122 motor cabs, 7,642 auto rickshaws, 87,600 motor cycles, 4,676 cars and jeeps. This shows that there has been considerable increase in the number of motor cycles and cars and jeeps. In the note circulated at the time of meeting of RTA, Warangal held on 22.10.2002, it was suggested that auto rickshaws plying in the city were involved in accidents due to carelessness and rash driving. It was also mentioned there has been growing criticism by the people and this had appeared in the newspapers with a suggestion that further registration of auto rickshaws should be stopped. However, there is nothing in the affidavit of Sri M.Basi Reddy or the documents annexed with it to show that that the decision to impose the impugned restriction was taken on the basis of any scientific study carried out by the department regarding the number of accidents involving auto rickshaws and the fatalities caused on that account. As a matter of fact, the impugned decision was taken only on the basis of some newspaper reports containing adverse views expressed by the members of public regarding the so-called accidents caused by plying of auto rickshaws. In our opinion, in the absence of data based study of the number of accidents caused by different types of vehicles including auto rickshaws, RTA, Warangal could not have imposed an unreasonable restriction on the right of the owners of auto rickshaws only to ply their vehicles within the municipal area and the learned Single Judge committed an error by approving the decision simply on the basis of bald averments contained in the counter affidavit filed by the respondent.

It is true that in terms of Section 74(2) and (3) of the Act and Rule 177 of the Rules, the Regional Transport Authority can impose various conditions including the use of vehicles in a specified area or on a specified route or routes and also limit the number of contract carriages operating on city routes and in towns with a population of not less than five lakhs but, such restriction can always be scrutinised on the anvil of constitutional parameters and if the Court comes to the conclusion that the conditions and/or restriction is arbitrary, unreasonable and un-conscionable, then

the same can be nullified.

Since the decision of the respondent to impose restriction on the plying of the rickshaws within the municipal limits, which was subject matter of the writ petition is not based on a comparative study carried out in regard to the number of accidents including fatal accidents and involvement of the nature of vehicles in such accidents, it is reasonable to hold that the same is arbitrary. Publication of opinion of a section of the society in some newspapers cannot be made basis for imposing restriction in terms of Section 74(2)(i) read with Section 74(3) of the Act and Rule 177 of the Rules. As a corollary to this, we hold that the impugned restriction is liable to be declared as violative of Articles 14 and 19(1)(g) of the Constitution.

For the reasons stated above, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, the writ petition filed by the appellant is allowed and condition No.6 imposed by RTA, Warangal at the time of grant of permit to three wheeler auto rickshaw owners is declared as ultra vires to the provisions of Section 74 of the Act. The respondent and its subordinates are restrained from interfering with the plying of auto rickshaws within the municipal limits of Warangal, Hanamkona and Kazipet. It is, however, made clear that in future the respondent shall be entitled to impose strict regulatory measures and also impose restrictions on the plying of auto rickshaws within the municipal limits, if on the basis of scientific study carried out by an expert body, the authorities come to the conclusion that the plying of auto rickshaws in the municipal limits is a danger to the public at large.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD,J

27-03-2006

ks/ARS/msv